

RESOLUTION NO. 93-16

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A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING AN AGREEMENT BETWEEN THE BOOSTERS OF BOYS AND GIRLS SPORTS  
AND THE CITY OF LODI FOR OPERATION OF THE CONCESSION FACILITIES AT  
ZUPO FIELD, 350 NORTH WASHINGTON STREET, LODI

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RESOLVED, that the Lodi City Council hereby approves an agreement on file in the Office of the City Clerk, between the Boosters of Boys and Girls Sports and the City of Lodi for the Booster's operation of the concession facilities at Zupo Park, 350 North Washington Street, Lodi for the term beginning March 1, 1993 and ending December 31, 1993; and

FURTHER RESOLVED, the City Manager and City Clerk are hereby authorized to execute the agreement on behalf of the City.

Dated: January 20, 1993

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I hereby certify that Resolution No. 93-16 was passed and adopted by the Lodi City Council in a regular meeting held January 20, 1993 by the following vote:

Ayes: Council Members - Mann, Sieglock, Snider, and Pennino  
(Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None

  
Jennifer Perrin  
City Clerk

AGREEMENT

CITY OF LODI

DEPARTMENT OF PARKS AND RECREATION

Concession Operations at

Zupo Park

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THIS AGREEMENT, made and entered into this 20th day of January, 1993,  
by and between the CITY OF LODI ("City"), and The Boosters of Boys and  
Girls Sports ("Concessionaire").

W I T N E S S E T H:

Concessionaire agrees to operate concession stands at the  
below-described Park under the following terms and conditions:

Area to be Serviced:

Location:

Zupo Park

350 North Washington Street

Lodi, California

City does hereby grant to Concessionaire the sole and exclusive right/license to vend food and drinks, etc. at the concession stands of the above-described Park, beginning March 1, 1993 and ending December 31, 1993.

The City will provide:

1. Enclosed concession stands with some limited City-owned equipment which Concessionaire will be expected to service and maintain at Concessionaire's sole cost and expense.
2. Water, sanitary sewer, gas, electricity, and garbage receptacles outside the concession buildings shall be provided by the City.
3. Maintenance of the general property of the concession buildings, unless abuse and lack of general care is apparent, at which time the cost and expenditures shall be that of the Concessionaire.

Concession Operation Conditions:

1. The length of the contract shall be from March 1, 1993 and shall end midnight, December 31, 1993. This agreement may be extended by mutual agreement.

2. Insurance:

Concessionaire is required to carry a policy of Comprehensive General Liability insurance in compliance with all of the provisions of the

"Risk Transfer Requirements For Lease or Use of City of Lodi Facilities (6/91 (KE))", attached hereto as Exhibit A and incorporated herein by reference.

Concessionaire shall save, keep and hold harmless the City of Lodi, its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of operations at Zupo Park.

Notwithstanding other provisions contained in this Agreement, the City Manager is granted the right to immediately terminate the Agreement upon failure on the part of the Concessionaire to keep in full force and effect during the entire term of the agreement, the insurance as set forth in this section.

3. Concessionaire shall, prior to opening for business, furnish a products and price schedule and shall follow the product and price schedule as mutually agreed to between the BOBS concession manager and City staff assigned to concession operations.
4. Concessionaire will provide all equipment and products to operate said concessions.
5. Concessionaire shall keep accurate records and books of accounts of all purchases and sales and does hereby give to the City or its authorized agents, the right to examine and audit said books at any

time City desires. The Concessionaire will complete monthly records on forms provided by the BOBS, and these reports shall be provided to the City by the tenth (10th) day of each month while in operation.

6. The dates and times of operation shall be as follows:

Zupo Park

Concessionaire shall operate from March 1 to November 15 at times commencing 15 minutes before events, and to the top of the last scheduled inning.

7. Concessionaire agrees to obtain at his/her own expense, any and all permits and licenses which may be required by law or ordinance in conducting the concessions, and to pay any and all taxes which may be assessed against him for whatever purposes in the operation of said concessions.
8. Concessionaire shall keep the concession stands and the immediate surrounding areas in clean and presentable condition at all times and follow the strictest of sanitary conditions, and any State and local ordinances applicable to the business to be conducted. Concessionaire shall be responsible to give to the City, written notice of any maintenance problems.
9. The rights granted hereunder for concession sales at the identified park, shall be exclusive to Concessionaire. Subleasing by the Concessionaire will not be allowed in this contract. Concessionaire will have first right of refusal on all special events in providing

required food and beverage service. If Concessionaire relinquishes its rights under this paragraph, City shall be free to contract with any other Concessionaire of its choosing to provide concessions for such special event.

10. Concessionaire is aware that a Possessory Interest Tax is or may be charged each year by the County Assessor for the use of the facilities and that this tax is the responsibility of the vendor.
11. The Parks and Recreation Director and Concessionaire as mutually agreed upon shall approve or disapprove any employee or operator of said concession stands on a basis of such considerations as dress, general cleanliness, working relationship with public, and staff needed to successfully vend food for day to day operations, tournaments or special events/activities. (The City will coordinate this action with Concessionaire manager.)
12. City reserves the right to enter upon the premises at any reasonable time, to inspect the operation and equipment thereon, or for any other purpose.
13. Concessionaire shall not have the right to sell, mortgage, assign or sublet the contract/agreement or any part thereof without the prior written consent of the City Manager, and a breach of this condition shall automatically terminate any contract or agreement between City and Concessionaire.

14. The Concessionaire shall be responsible for the security of the concession stand and any storage buildings assigned to its exclusive use as far as locks on doors and windows or installation of an alarm system if it is deemed necessary by mutual agreement and Concessionaire shall be responsible for any acts of vandalism to Concessionaire's equipment and/or inventory.
15. At the conclusion of or termination of any stated agreement/contract, Concessionaire will be expected to surrender said concession premises in as good an order as that in which they would receive same, excepting ordinary wear and tear. Damage to or mistreatment of the buildings or City equipment will be the responsibility of the Concessionaire to repair, replace, or reimburse for repair or replacement.
16. The agreement/contract may be terminated by written agreement of either party hereto without cause upon sixty (60) day's written notice to the other party. Such notice shall be delivered to the City Manager's Office, City Hall, 221 West Pine Street, Lodi, or to the Concessionaire at a premises which is subject to this agreement.
17. If Concessionaire defaults in any of the terms contained herein, the Concessionaire's agreement to provide service as specified herein shall terminate upon failure of Concessionaire to correct the default within thirty (30) days of receiving written notice thereof from the City. Upon any termination hereof, Concessionaire agrees to quit and surrender possession peaceably and City shall have the right to remove

Concessionaire and all others occupying through or under this agreement.

18. In the event that either party brings an action under this Agreement for the breach or enforcement thereof, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs whether or not such action is prosecuted to judgment.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first hereinabove written.

CONCESSION OPERATIONS

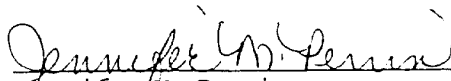
ZUPO PARK

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CITY OF LODI, a municipal  
corporation

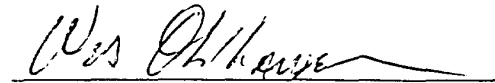
  
THOMAS A. PETERSON  
City Manager

ATTEST:

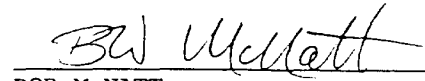
  
Jennifer M. Perrin  
City Clerk

AGRBOBS/TXTA.01V

CONCESSIONAIRE  
BOOSTERS OF BOYS AND GIRLS SPORTS

  
President

APPROVED AS TO FORM:

  
BOB McNATT  
City Attorney



E X H I B I T A

CITY OF LODI

6/91  
(KE)

RISK TRANSFER REQUIREMENTS  
FOR LEASE OR USE OF CITY OF LODI FACILITIES

1. Any individual party or group (hereinafter called Lessee) leasing, renting or otherwise using City of Lodi facilities, is required to carry a policy of Comprehensive General Liability insurance, and must complete a formal "Agreement Assuming Risk of Injury Damage - Waiver and Release of Claims" form. Processing of applications is handled by the department responsible for the facility or equipment.
2. A duplicate or certificate of insurance shall be delivered to the City prior to use of City facilities, as set forth herein.

NOTE: Lessee agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Govt. Code < 810 et seq.).

"Claims made" coverage requiring the insured's to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

3. Each insurance certificate shall contain satisfactory evidence that each carrier is required to give the City of Lodi immediate notice of the cancellation or reduction in coverage of any policy during the effective period of the use of the City's facilities.
4. Each insurance certificate shall state on its face or as an endorsement, the location of and a description of the function that it is insuring.
5. If the City has not received the certificate of insurance within seventy two (72) hours prior to the commencement of any portion of the function, the City's facilities will not be allowed to be utilized, and any contract or agreement entered into will become null and void.
6. Provided the lease agreement or contract does not prohibit a subtenant, all provisions of these requirements shall apply to and be construed as applying to any subtenant of the Lessee.
7. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Risk Transfer Requirements, continued

8. In each and every instance, the City of Lodi must be named as an additional insured on the face of the insurance certificate or as an endorsement attached to the certificate of insurance. (THE CITY OF LODI MUST BE NAMED THE ADDITIONAL INSURED, NOT HUTCHINS STREET SQUARE, PARKS AND RECREATION, OR OTHER INDIVIDUAL OR DEPARTMENT.)
9. The address of the City of Lodi must be shown along with No. 8 above, i.e., Additional Insured, City of Lodi, 221 West Pine Street, Lodi, California 95240.
10. In addition to the Additional Named Insured Endorsement on Lessee's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insured's shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."
11. The combined single limits for bodily injury and property damage shall not be less than \$1,000,000 each occurrence. If alcohol is to be consumed or sold at the Lessee's event, then liquor liability coverage must be provided.
12. The Policy effective date and expiration date must coincide with and span the date(s) of the event being insured.
13. If the limits of coverage are not the amounts specified in Section 10 and 11 above, and/or if the City is not named as an additional insured on the certificate of insurance, and/or if the certificate is a "claims made" certificate, not in conformance with the requirements of Paragraph 2 above, the City will not accept the certificate of insurance, and a corrected certificate of insurance must be furnished to the City prior to any use of any City facility.
14. If a correct insurance certificate and "Agreement Assuming Risk of Injury Damage" is not received by the City of Lodi at least 72 hours prior to the use of the City facilities, the City will not allow the City facilities to be used, and any agreement or contract entered into will become null and void.
15. If the Lessee requires assistance in obtaining affordable insurance coverage which meets all of the specifications enumerated above, the Assistant to the City Manager can provide appropriate direction.